COURT NO.3

Criminal Revision No. 813 of 2001
(Old No. 610/1989)

Umesh Chandra Gupta ----------Appellant

Versus

State & other ----------Respondent

Hon'ble Irshad Hussain, J.

This is complainant's revision against the judgment of acquittal of the accused Joginder Singh under Section 302 and 324/34 IPC and accused Pritam Singh and Resham Singh under section 302/34 and 324/24 IPC as recorded by Sessions Judge, Nainital as per judgment dated 3.3.1989 in Sessions Trial No. 45 of 1986. None appeared for the revisionist and the accused. Heard learned AGA and perused the record.

2. The case against the three accused was registered on 27.9.1985 at P.S.Khatima at 4:40 PM on the basis of the written report Ext. Ka. 1 lodged by Umesh Chandra (P@-2), who had filed this revision.

3. Briefly stated the prosecution case was that at about 3:30 PM on 27.9.1985, complainant Umesh Chandra (PW-2), his wife Smt. Gyanwati, his son Anil Kumar and one Satya Narain Sharma (PW-1) were, at their tubewell installed in his land. They were engaged in conversation. Santosh Kumar was lying on a cot at that time. Accused Joginder Singh armed with a Balam and the co-accused Pritam Singh and Resham Singh armed with swords came there on a motor-cycle. After parking their motor-cycle, they reached near the cot where Santosh Kumar was lying on it. Accused Joginder Singh gave a blow with Ballom on the neck of Santosh Kumar. On seeing this, Umesh Chandra, Smt. Gyanwati, Anil Kumar and Satya Narain Sharma proceeded towards the accused, whereupon accused Pritam Singh and Resham Singh gave one blow each with their swords which resulted in injuries to Smt. Gyanwati. Thereafter, they fled away on their motor-cycle. Santosh Kumar succumbed to his injuries on way to the

hospital. The police after investigation of the case submitted charge-sheet against these accused on 15.10.1985.

4. At the trial in order to prove its case, the prosecution relied upon the evidence of the complainant Umesh Chandra (PW-2) injured eye-witness Smt. Gyanwati (PW-3) and other eye-witness Satya Narain Sharma (PW-1). Investigating Officer, S.I. Devender Kumar Thapliyal (PW-5) was also examined. Affidavit of Constable Panch Dev (PW-4) was filed to prove that he took the dead body of Santosh Kumar, after it was handed over to him and another Constable on completion of the formality of the inquest, for postmortem. No evidence has been adduced in defence.

5. Learned Sessions Judge on the basis of the appreciation of the evidence of the prosecution found the charges not proved beyond reasonable doubt and the accused were accordingly acquitted.

6. Out of the three witnesses, Satya Narain Sharma was declared hostile in view of his claim that the FIR Ext. Ka.1 was dictated to him by the police Inspector and further that complainant Umesh Chandra (PW-2) was not present at the scene of the occurrence. The evidence of complainant Umesh Chandra (PW-2) was not found reliable for the reasons that he has litigated with accused Joginder Singh regarding land dispute; that it is admitted by him that the names of the accused have been mutated over the land in question; that despite his claim that he was also given Ballam blows no injury was sustained by him and that his claim that his son Hirdesh Kumar had snatched Ballam from the hands of the Joginder Singh not finding place in the FIR got prepared by him and lodged at the police station.

7. Other circumstances telling upon the credibility of the complainant were taken not of by the learned Sessions Judge and considering these factors, it cannot safely be said that the learned Sessions Judge drew incorrect inferences and that his conclusion that the evidence of the complainant eye witness is not trustworthy is perverse.

8. In regard to the evidence of injured eye witness Smt. Gyanwati, the learned Sessions Judge rightly considered the aspect that the two injuries said to have been received by her in the occurrence were superficial which probably could not have been caused if the accused were to give sword blows on her person. According to her (husband) Umesh Chandra (PW-2) eye witness Satya Narain Sharma and another son Anil Kumar rushed to the rescue the victim Santosh Kumar but the accused have not given any blow of their weapon on the person of these witnesses. The learned Sessions Judge was of the view that it was highly improbable that Smt. Gyanwati could have reached near the accused before other witnesses and was given blow of the swords by accused Pritam Singh and Resham Singh. This apart, interpolation in the medical examination report of this witness was noticed and it became doubtful that the witness really sustained any injury in the occurrence. The possibility was there was superficial injuries were manufactured to show that this got up witness was really present at the scene of the occurrence. In these circumstances, the rejection of her statement by the learned Sessions Judge was also justified and by no reasoning the view so taken can be said to be perverse. The accused have been rightly held not guilty and acquitted in this case.

9. In view of the above, I find no infirmity whatsoever in the appreciation of the evidence of the prosecution by the learned Sessions Judge and therefore, the instant revision has no merit and is liable to be dismissed. Revision is hereby dismissed.

(Irshad Hussain, J.)

Dated 26.9.2003

(Rawat)